

**MACOMB COUNTY**

**FRIEND OF THE COURT**

**HANDBOOK**

**SIXTEENTH  
JUDICIAL CIRCUIT**

**INTRODUCTION**

This handbook provides information about duties and procedures for the Friend of the Court, rights and responsibilities of parties in family law matters, and information about basic Court procedures in domestic relations cases.

Family law matters can be difficult and painful. The Family Division of the Circuit Court is responsible for resolving the legal concerns which affect your family.

Family law matters can be difficult for children. Parents can help by establishing or maintaining children's regular routines, encouraging frequent and regular contact between the children and both parents, being supportive of the other parent's participation in the children's school and other activities, and exchanging information regarding the children's well-being.

Children need both parents. When you cooperate, you reassure your children that change will be positive. You also build the foundation for your new parental relationship and responsibilities. Your children will always want you both to be part of their lives, to attend their high school or college graduations, to be at their weddings and the birth of their children, and to be part of other major life events. They want to be able to say that, despite what mom and dad may have felt toward one another, they always treated each other with courtesy and respect and never put us (the children) in the middle of their dispute.

We will do our best to handle your case quickly and fairly. Please follow the suggestions in this handbook and you will be well on your way to doing your part.

Sincerely,

Lynn M. Davidson, Director  
Macomb County Friend of the Court

## **MACOMB COUNTY CIRCUIT JUDGES**

Hon. Peter J. Maceroni, Chief Judge

Hon. Deborah A. Servitto

Hon. Mary A. Chrzanowski

Hon. Donald G. Miller

Hon. James M. Biernat

Hon. Edward A. Servitto Jr.

Hon. Richard L. Caretti

Hon. Mark S. Switalski

Hon. Antonio P. Viviano

Hon. Matthew S. Switalski

Hon. Diane M. Druzinski

## **MACOMB COUNTY PROBATE JUDGES**

Hon. Pamela Gilbert O'Sullivan

Hon. Kathryn A. George

Hon. Tracey A. Yokich

## **MACOMB COUNTY FRIEND OF THE COURT**

Lynn M. Davidson, *Director*

## RELATED COMMUNITY SERVICES

Circuit Court Psychodiagnostic Clinic & Family Counseling Services Clinic.....	586-469-5204
Prosecuting Attorney (Criminal Division).....	586-469-5350
(Child Support Division).....	586-469-7332
County Clerk (Court Records).....	586-469-5208
Probate Court (Juvenile Records).....	586-469-5240
Children's Protective Services.....	586-412-6109
Community Mental Health.....	586-469-5275
Family Independence Agency (FIA) Mt. Clemens Office.....	586-469-7700
Sterling Heights Office.....	586-254-1500
Warren Office.....	586-573-2300
Lawyer Referral Service Macomb County Office.....	586-468-8300
State of Michigan Office.....	1-800-968-1442
Legal Aid and Defender Association.....	313-964-4111
Crisis Center.....	586-307-9100

## MAILING ADDRESS

**Friend of the Court**  
40 N. Main Street  
Sixth Floor, Court Building  
Mt. Clemens, MI 48043-8606

**Interactive Voice Response**  
(586) 469-7618

**Operator Assistance**  
(586) 469-5160

**Office Hours**  
Monday through Friday  
8:00 a.m. to 5:00 p.m.

**Telephone Hours**  
Monday through Friday  
8:00 a.m. to 12 noon  
1:00 p.m. to 5:00 p.m.

For Your Convenience:

My case number: \_\_\_\_\_

My Judicial Service Officer:  
\_\_\_\_\_

My Judicial Service Officer's  
Telephone Number: \_\_\_\_\_

A Judicial Service Officer is assigned to each case and has a direct telephone number. It is suggested that you note the name of your Judicial Service Officer and his/her telephone number to expedite your contact with the Friend of the Court Office.

## TABLE OF CONTENTS

The Friend of the Court .....	
Procedures of the Court .....	
Domestic Relations Process .....	
Divorce .....	
Family Support Actions .....	
Paternity Actions .....	
Interstate Actions .....	
Rights and Responsibilities of Parties .....	
Duties of the Friend of the Court .....	
Alternative Dispute Resolution .....	
Mediation .....	
Custody .....	
Custody Questions and Answers .....	
Parenting Time Orders .....	
Parenting Time Questions and Answers .....	
SMILE Program .....	
Support Orders .....	
Accounting .....	
Support Enforcement .....	
Modification of a Support Order .....	
Support Questions and Answers .....	
Questions Regarding Miscellaneous Issues .....	
Referees .....	
Complaints about the Domestic Relations Legal System .....	
Glossary of Terms .....	
Policies and Procedures of the 16 <sup>th</sup> Judicial Circuit Court, Family Division .....	

## **FRIEND OF THE COURT HANDBOOK**

This handbook provides useful information about the Friend of the Court and the child support enforcement program (also known as the IV-D (Four D) program).

This handbook also describes the basic duties of parties when the Court has issued an order for custody, parenting time or support. Any questions regarding procedures or requirements outlined in this handbook may be discussed with your local Friend of the Court, or with an attorney of your choice.

To become familiar with some legal terms, please refer to the glossary.

## **THE OFFICE OF THE FRIEND OF THE COURT**

The Friend of the Court Office was created in 1919 by Michigan law, and there is at least one office servicing each Circuit Court.

The Friend of the Court has the following duties:

1. To conduct investigations and make reports and recommendations to the Court regarding:
  - Custody
  - Parenting time
  - Child support
  - Spousal support
2. To offer mediation as an optional way of settling custody or parenting time disputes.
3. To collect and process support payments through the State Disbursement Unit (SDU), as ordered by the Court.
4. To provide enforcement services on all custody, parenting time and support orders entered by the Court.

## **PROCEDURES OF THE COURT**

Anyone who wants to start a case must file the correct papers in the Circuit Court according to specific rules (Michigan Court Rules). The Court cannot require a party to use an attorney to start or to respond to a case. Sometimes, there are many difficult issues involved, and it may be wise to have an attorney file the correct papers.

## **Plaintiff's Complaint**

Each case begins with the plaintiff filing papers (complaint or motion) which asks the Court to grant an order. A complaint or motion may ask the Court to:

- Grant a divorce.
- Order child support or spousal support (formerly referred to as alimony).
- Establish a paternity case.
- Start an out-of-state support collection effort.
- Grant an order for custody of a child.
- Establish parenting time with a child.

The defendant is the person upon whom the complaint is filed.

## **Service**

Michigan Court Rules state that the defendant must be given a copy of the summons and complaint and a Friend of the Court informational handbook whenever minor children are involved or spousal support (alimony) is requested. The summons asks the defendant to answer the complaint. The summons and complaint must be delivered in such a way that the defendant has notice a case has been started against him/her.

## **Defendant's Answer to Complaint**

Once the defendant receives the papers, (s)he is allowed time to answer the claims made. If an answer is not filed within the time frame permitted (usually 21 days), the defendant may lose the right to have his/her concerns heard by the judge. This could result in an order granting the plaintiff's requests.

## **Hearings**

After a complaint has been filed, either party or the Friend of the Court may file a motion asking for orders deciding custody, parenting time, and child support. The Court gathers necessary information at a hearing to decide what should be ordered.

If a hearing is scheduled before a referee or judge, both parties must be notified of the time and place. This provides a parent with an opportunity to tell the judge or referee why a specific order should be made.

## Court Orders

When a Court makes a decision, someone must write it in the form of an order. This is usually done by the parties or their attorneys, but sometimes is done by the Court. An order is not valid until a judge signs it and it is filed with the County Clerk. A referee can recommend an order, but it is not valid until signed by the judge.

A divorce ends the legal relationship between a husband and wife. Although the relationship will change, a divorce does not end the family relationship. Many decisions should be made before a Judgment of Divorce is granted. Those decisions may include:

- How will guidance and care for the children be provided? (custody)
- How much time will children and the parent they don't live with have together? (parenting time)
- How will financial duties for the children be divided? (support)
- How will the children's medical, dental and other health care expenses be paid? (health care coverage)
- What amount, if any, should one party contribute toward the support of the other, either for a short time or on a permanent basis? (spousal support/alimony)
- How should property gathered during the marriage be divided? (property settlement)
- Will the wife take back her maiden name? (restoration of maiden name)
- Will the children be allowed to permanently move from the State of Michigan? (domicile)

Divorce issues may be decided in many ways; for example:

- The parties may be able to reach an agreement by themselves, or by working with their attorneys.
- Mediation is available through the Friend of the Court or private agencies to resolve disagreements over custody and parenting time.
- A Friend of the Court referee may hear the issues and make a recommendation to the judge.
- The judge or referee may help settle a case at a status or settlement conference.
- The judge may hold a hearing or trial on issues that cannot be otherwise resolved.



Copies of all papers filed in a case must be given to the Court Clerk and to the Friend of the Court by the person starting the case or their attorney. Recommendations on custody, parenting time and child support will be made by the Friend of the Court, if the Friend of the Court is directed to do so by the judge.

### **Ex Parte Orders (order entered without either party having to appear in Court)**

Sometimes a judge will immediately enter a custody, parenting time or child support order upon request of one of the parties. This happens if it can be shown to the judge that serious damage will occur if the other party is served with the papers before an order can be entered.

If a party disagrees with an ex parte order, they must file a written objection to the order, or file a motion with the Court to modify (change) or set aside (cancel) the order.

When an ex parte order contains a parenting time provision, the order must also include a notice that allows a written objection or motion to be filed within 14 days. If a party wishes to file an objection, and the Friend of the Court cannot help the parties settle the dispute, the Friend of the Court will provide forms and instructions for filing an objection, and schedule a hearing with the Court.

In all other respects, the ex parte order must state that it will become a temporary order unless a written objection or motion is filed within 14 days.

### **Temporary Orders**

After a complaint has been filed, temporary custody, parenting time, child support and sometimes spousal support (alimony), may need to be decided. Either party, or in some cases the Friend of the Court, may file a motion with the Court asking for such an order.

If a hearing before a referee or judge is scheduled, both parties must be notified of the time and place. At the time of the hearing, each party can offer their ideas to the Court. The decision made by the Court is written down by the attorneys or parties in the form of an order. An order is not valid until it has been signed by the judge and filed with the Court Clerk. NOTE: Only a judge can enter orders or judgments. A referee can hear disputes, but can only make recommendations or submit a recommended order to the judge.

### **Reconciliations and Dismissals**

Not every case ends with separated parents. If parties are trying to work out their differences and wish to have enforcement of their order stopped, they may file a motion with the Family Division of the Court to request an order to suspend automatic enforcement. Enforcement of a support obligation cannot be stopped except by Court order.

If parties wish to stop all further actions on a case, they must file an order of dismissal with the Family Division, and provide a copy to the Friend of the Court. The support payer must pay any past due support owed to the State of Michigan (which occurs when support is not paid while the custodial parent is receiving TANF), and any amounts owed to the Court or the County.

### **Judgment of Divorce**

A Judgment of Divorce contains the decisions of the Court regarding custody, parenting time, support, property settlement and other related issues.

From the date of the filing of a complaint for divorce, there is a minimum waiting period. For divorce cases without minor children, this waiting period is a minimum of sixty days. For divorce cases involving minor children, this waiting period is a minimum of six months.

After the waiting period is over, the judge may grant a divorce. Once a Judgment of Divorce has been entered, the parties must obey the judgment until it is modified.

### **Modification of a Judgment of Divorce**

After a Judgment of Divorce has been entered, there are some parts that can be modified (changed). These include custody, parenting time, child support, child care, medical support and domicile.

A change can occur if:

- (1) Both parties have mutually agreed to change the Judgment and sign an agreement (stipulation and consent agreement) which, when signed by the judge, will be entered as an order; or
- (2) A motion has been filed, a Court hearing has been held, and the judge grants a change.

Sometimes, the Friend of the Court has an obligation to motion the Court for a change (See Parenting Time section and Support section).

### **FAMILY SUPPORT ACTIONS**

A person who has a minor child living with them and who is separated from their spouse with no divorce case having been filed, may seek an order under the Family Support Act (known as a family support order).

Generally, family support cases are started by the Prosecuting Attorney after a referral from the Family Independence Agency. The Family Independence Agency makes referrals whether or not a person receives public assistance. A person may also file their own action or contact a private attorney to file a family support case.

The Family Support Act does not address custody and parenting time, but some Courts will allow these issues to be included in a family support order. You may ask the Prosecuting Attorney or your private attorney about local Court policy before an order is entered.

The Friend of the Court has an obligation to enforce orders of support. If parties reunite and decide to end the family support order, they must motion the Court for an order of dismissal. After the order is signed by the judge and filed with the County Clerk, the Friend of the Court must be given a copy.

**Simply notifying a Family Independence Agency caseworker, or Friend of the Court employee does not end the Court's support order.**

When the Friend of the Court receives the order of dismissal, the family support order will stop. If children have received public assistance, arrangements must be made with the Friend of the Court to pay any money owed to the State of Michigan.

Some Courts will not dismiss a family support order on the basis of reconciliation. However, they will allow the case to be placed on inactive status, and remain inactive as long as the parties remain together and no public assistance is involved.

A family support order does not prevent either party from filing for divorce. However, the family support order will remain in effect until a Judgment of Divorce is granted. If back support is owed under the family support order, arrangements to pay this money back must be made with the Friend of the Court.

## **PATERNITY ACTIONS**

Paternity is a legal decision that determines the father of a child born to an unmarried mother.

Either parent, the child, or the Family Independence Agency can request the Court establish paternity any time before a child reaches the age of 18.

Generally, paternity cases are started by the Prosecuting Attorney after a referral from the Family Independence Agency.

The Family Independence Agency makes referrals whether or not a person receives public assistance. A person may also file their own action or contact a private attorney to file a paternity action.

Once paternity has been established, the Court may order child support, repayment of birth and delivery expenses of the child, and ongoing health care expenses for the child.

Custody and parenting time are not automatically ordered in paternity actions. If a parent who has a paternity case would like custody or parenting time, they should tell the Prosecuting Attorney or their private attorney before an order is entered.

Absent a formal request by either party, the right of reasonable parenting time is reserved. The Friend of the Court cannot help with parenting time problems unless a Court order for parenting time has been established.

If the parties to a paternity action reconcile or marry one another, they should immediately contact the Friend of the Court to discuss how their case can be placed on inactive status. Arrangements must be made to pay all money owed to any public agency.

## **INTERSTATE ACTIONS**

Child support obligations remain in effect regardless of where you live, unless changed by a Court order. There are serious legal consequences if orders are not followed.

The child support obligations does not end when either parent leaves the State of Michigan, even if the child lives in a different state from the support payer. Both parents have a duty to keep the Friend of the Court advised of their residence and employment. The payer must continue to pay support through the Friend of the Court to assure the recipient continues to receive support. The Friend of the Court has a responsibility to continue enforcing the Court order.

If a support payer leaves Michigan and support payments are not timely, or stop altogether, there are laws between each state to assure that payments are made. Laws to enforce support include:

- **Uniform Interstate Family Support Act (UIFSA)**

UIFSA assists states in dealing with cases where a party or source of income is in another state. It replaces other interstate child support laws. Under UIFSA, only one state has the right to establish or modify support. This right can be given to another state only if certain conditions are met.

This act became effective in Michigan on June 1, 1997. If you know that the support payer in your case has moved to another state, contact the Friend of the Court to determine whether you can obtain assistance under UIFSA. Some of the procedures available under UIFSA follow:

- **Interstate Income Withholding**

This process allows the Friend of the Court to send a notice directly to an employer in another state, requiring the employer to deduct child support and send it to the Michigan State Disbursement Unit. If the employer fails to withhold the support, the income withholding order can be registered in the other state. The other state can then assist in getting the employer to withhold the support.

- **Registration of the Michigan Court Order for Enforcement**

The Friend of the Court or a private attorney can help with this process. Registration for enforcement allows another state to take the Michigan order and enforce the full amount of support as if it were that state's own order.

- **Registration for Modification**

When Michigan or another state no longer has jurisdiction to modify the support order (e.g., neither party or the child lives in the state that issued the order), and the order needs modification, the order may be registered in the state where the other party lives.

- **Assistance with Discovery in Another State**

UIFSA provides some assistance in obtaining information needed for support hearings if one of the parties lives in another state. See your Friend of the Court Office for more information regarding what assistance is available.

- **Revised Uniform Reciprocal Enforcement of Support (RURES) Action**

RURES preceded UIFSA. It was an interstate law which allowed establishment and enforcement of child support orders in the state where the support payer lived.

If a RURES order was established in your case, it will continue to be enforced. Modifications after June 1, 1997 must comply with the requirements of UIFSA.

## **RIGHTS AND RESPONSIBILITIES OF THE PARTIES**

**Each party has the right to:**

1. Expect the Friend of the Court to perform the duties required by Michigan statute and Court rule.
2. Expect the Friend of the Court to explain its policies and procedures.
3. Fair and courteous treatment by Friend of the Court employees.
4. File a grievance with the Friend of the Court Office concerning an employee or office procedure.

5. File a grievance with the Citizens Advisory Committee about Friend of the Court operations.
6. Consult with their own attorney about any questions or concerns.
7. Proceed in the case without Friend of the Court assistance (opt out) if agreed to by the other party and ordered by the Court.

Parties do not have to use the services of the Friend of the Court if they file a motion to “opt out”, and the motion is granted by the Court. Prior to entry of an order, the parties must file a document that includes a list of Friend of the Court services and a signed acknowledgement that the parties are choosing to do without these services.

When starting a case, the opt out motion must be filed at the same time as the complaint. If timely filed, the Court must order the Friend of the Court not to open a case unless one or more of the following are true:

- A party is eligible for IV-D services because a party is receiving or has applied for public assistance
- A party has applied for IV-D services
- A party has requested the Friend of the Court to open a case
- There is evidence of domestic violence or uneven bargaining positions and the request is against the best interests of a party or the parties' child

The parties also may file a motion requesting the Court to order the Friend of the Court to close its case. The Court will issue the order unless it determines one of the following:

- That a party objects to the closure
- A party is receiving public assistance
- Within the previous 12 months an arrearage or custody or parenting time violation has occurred in the case
- Within the previous 12 months a party to the case has reopened the Friend of the Court case
- There is evidence of domestic violence or uneven bargaining positions and the request is against the best interests of a party or the parties' child

Closing a Friend of the Court case requires the parties to assume full responsibility for administration and enforcement of the Court orders. To assure proper accounting of support payments and their consideration in future

proceedings, the parties may choose to have support payments made through the Michigan State Disbursement Unit (MiSDU) even after a Friend of the Court case is closed. A party may reopen a Friend of the Court case by applying for public assistance or requesting services from the Friend of the Court.

**Each party has a responsibility to:**

1. Inform the Friend of the Court, in writing, of the following information:
  - Current residential and mailing address.
  - Current employer or source of income's name, address and telephone number.
  - Current telephone number.
  - Any occupational or driver's license held, and the party's driver's license number.
  - Social Security number, unless exempt by law from obtaining or disclosing that number.
  - Current residence of children.
  - Current information regarding health care coverage available as a benefit of employment or maintained by either party.
2. Provide information to the Friend of the Court to assist the office in carrying out its duties as required by law.
3. Obey all orders of the Court.
4. Keep appointments made with the office, or take the time to cancel or reschedule the appointment.
5. Treat Friend of the Court employees fairly and courteously.

## **DUTIES OF THE FRIEND OF THE COURT**

### **ALTERNATIVE DISPUTE RESOLUTION**

If you are a party to an action and have a dispute that you cannot resolve between you and the other party or parties, you are encouraged to participate in alternative dispute resolution. Typically, when parties go to Court, decisions affecting their family are made

by the judge, based upon available evidence and according to law. Parties often feel that going to Court and having a judge make the decision results in a sense of loss, because decisions are made by someone not directly affected by the outcome. Alternative dispute resolution places the responsibility for settling issues upon parties, without the direct involvement of the Court. Alternative dispute resolution may involve parents, grandparents, and even third parties. It maintains the decision-making power for families in the hands of people who have a personal interest in, and knowledge of, that family, and not with the judge or another third party.

## **MEDIATION**

The Friend of the Court may provide domestic relations mediation when there is a disagreement over custody or parenting time.

Mediation is used to help parties reach their own agreements without going to Court. Both parties must voluntarily agree to use mediation. In formal mediation, the mediator is a neutral person who cannot tell anyone about discussions the parties had during mediation. A mediator can prepare a consent agreement, if the parties are able to settle their dispute. In formal mediation, the mediator of a case cannot later investigate any disputes between the parties, or enforce any Court orders involving either of the parties.

### **Court Rule Domestic Relations Mediation**

The Court may refer family matters to mediation under the Michigan Rules of Court (MCR 3.216). This referral may occur when the parties agree to mediation, upon written motion of one of the parties, or upon the direction of the Court.

For mediation under the Court Rule, the parties may agree to have any person mediate. Otherwise, if they do not have an agreed mediator, the mediator must have obtained family law mediation training and have other qualifications listed in the Court Rule.

Parties must attend the mediation sessions and may be accompanied by their attorneys. Any information shared with the mediator is considered privileged and the mediator may not disclose this information during any future proceedings or at trial.

If an agreement is reached during mediation, that agreement must be reduced to writing and signed by the parties and their attorneys. The parties must take necessary steps to have the mediation agreement entered as an order of the Court.

If an agreement is not reached during mediation and the parties have requested evaluative mediation, then the mediator must prepare a report to the parties setting forth the mediator's recommendations on issues. If both parties accept the mediator's recommendation, the parties must take necessary steps to have the recommendation entered as an order.

If either party rejects the mediator's recommendation, even in part, the case will go to trial. The Court may not take the mediator's report and recommendation into consideration at trial.



An individual who performs Court Rule Domestic Relations Mediation is entitled to reasonable fees, which are usually divided equally between the parties.

### **Arbitration/Binding Mediation**

In some circuits, parties who have a dispute may participate in arbitration. Arbitration, also known as binding mediation, may be conducted by an individual or a panel. The arbitrator(s) will consider the parties' issues and may consider the input of witnesses. If the parties cannot agree on issues, the arbitrator will make a determination based upon the information available.

Once the arbitrator makes his/her decision, that decision is binding upon the parties, unless the Court vacates the decision based upon evidence that the arbitrator was biased, exceeded his or her powers, refused to hear evidence, or was otherwise prejudiced.

If the arbitrator's decision is not vacated, it will be enforced by the Court in the same way as any other order of the Court.

You may contact an attorney or the Friend of the Court Office to determine the types of alternative dispute resolution methods available in your area.

### **CUSTODY**

A number of custody arrangements are possible. In each type of arrangement, the Court must decide who will make major decisions about medical treatment, education, and any religious instruction. The Court must also decide how the child's time will be shared between the parties.

At the request of either parent, the Court must consider ordering joint custody. If the parents agree on joint custody, the Court must order it unless the Court determines that joint custody is not in the best interests of the child.

Parents are encouraged to reach their own agreements regarding custody. When parents cannot agree, the judge must decide by considering factors set forth in the Michigan Child Custody Act. See MCL 722.23. These factors will be considered at a hearing where the parents may produce evidence about each factor.

- (a) The love, affection and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care and other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school and community record of the child.
- (i) The reasonable preference of the child, if the Court deems the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
- (k) Domestic violence, regardless whether the violence was directed against, or witnessed by the child.
- (l) Any other factor considered by the Court to be relevant to a particular child custody dispute.

When deciding, the Court must state on the record its reasons for granting or denying the request. The Court may consider joint custody without a parent's request. In addition to the normal factors considered when deciding custody, for joint custody the Court must also consider whether the parents will be able to cooperate and generally agree concerning important decisions affecting the child's welfare.

If the Court determines that a child's best interests are not adequately represented in the proceedings, the Court may appoint a lawyer-guardian ad litem to represent the child. The Court may require the parties to pay the lawyer-guardian ad litem's fees based on their ability to pay.

## **CUSTODY QUESTIONS AND ANSWERS**

- **How do I get an order for custody?**

A motion must be filed requesting custody. If parents agree, they may sign an agreement (stipulation) and consent order, and obtain the judge's approval.

- **How do I change an existing order for custody?**

A motion must be filed to change a custody order. If parents agree, they may sign an agreement (stipulation) and consent order, and obtain the judge's approval. That agreement will then change the custody order.

- **Do I need to have an attorney to get custody?**

You are not required to have an attorney to file a motion for custody. However, there may be many complex issues involved in a custody case and you may wish to have an attorney represent you. The Friend of the Court cannot file a motion for you, nor can they provide you with an attorney and/or legal advice.

- **Is there any way the Friend of the Court can assist parties in reaching an agreement regarding custody?**

The Friend of the Court may provide domestic relations mediation when there is a custody dispute. Mediation allows an impartial third party to assist parents in settling their custody dispute. Both parties must agree to participate in mediation.

- **Are there different kinds of custody?**

Yes, a number of custody arrangements are possible. The most common are:

- **Joint Legal Custody:** Means that parents will communicate and cooperate with one another and attempt to reach mutual decisions regarding major issues affecting their children. This decision making process includes, but is not limited to: major medical decisions, educational decisions, and religious upbringing, if any.
- **Joint Physical Custody:** Means an order of the Court which states that children live with one parent part of the time and the other parent part of the time. This time does not have to be equal. The parent who has care of the children at any given time is responsible for routine decisions regarding the children.
- **Sole Physical Custody:** Means that the children live with one parent and that parent is responsible for making major decisions regarding the children.
- **After a motion for custody has been filed, and we cannot reach our own agreement, what does the Friend of the Court have to do?**

The Friend of the Court is required to:

- (1) Offer mediation services to the parties; or
- (2) If directed by the judge, conduct an investigation and file a written report and recommendation based upon the factors listed in the Michigan Child Custody Act.

- **Do I have the right to receive a copy of the Friend of the Court report and recommendation on custody?**

Upon request, the Friend of the Court must give each party, or their attorney, a copy of the report, recommendation and any supporting information, or a summary of the information, used in making the recommendation. This report must be provided before the Court takes any action on the recommendation.

- **What happens if I have an order for custody and the other parent does not return the child to me as stated in the Court order?**

- You may contact the Friend of the Court and request enforcement.
- If you have reason to believe the other parent does not intend to return the child, you may contact the police and/or Prosecuting Attorney and request that parental kidnapping charges be filed.

- **How do I enforce a custody order if the other parent has taken the child to another country?**

When a child of U.S. citizenship is abducted and taken outside of the country, the State Department's Office of Children's Issues works with U. S. embassies and foreign authorities to assist the child and custodial parent. However, child custody disputes are private legal matters between two parents and the Department of State has no jurisdiction. If a child custody dispute cannot be settled, it often must be resolved by judicial proceedings in the country where the child is located. The State Department can assist parents in filing an application with foreign authorities and monitoring judicial or administrative proceedings for the return of the child.

- **How do I contact the Office of Children's Issues at the Department of State?**

You can write to the Office of Children's Issues, Overseas Citizens Services, Department of State, 2201 C Street, NW, Room 4817, Washington, DC 20520-4818. That office also can be reached by phone at 202-736-7000, by fax at 202-647-3000, or on the Internet at <http://travel.state.gov>.

- **Can my child enroll in the school district I live in, even though the child lives with the other parent most of the time?**

Michigan law provides that a child may enroll in a school district where either parent resides, regardless of which parent has custody. Where a child regularly resides in two school districts as a result of a joint custody order, the child may attend school in either or both of the districts.

- **Does the Friend of the Court have an obligation to investigate alleged abuse or neglect of a child?**

No. Allegations of abuse or neglect should be reported to the Protective Services unit of your local Family Independence Agency.

The Friend of the Court has a duty, when ordered by the Court, to conduct an investigation when a party files a custody or parenting time motion. Claims of abuse or neglect should be disclosed to the Friend of the Court during their investigation.

## **PARENTING TIME ORDERS**

A parenting time order grants time between the parent who does not have custody and the children. The Michigan Child Custody Act (MCLA 722.27a, MSA 25.312(7a)) states that "parenting time shall be granted in accordance with the best interest of the child." If the parties agree on parenting time terms, the Court shall order those parenting time terms, unless the Court determines on the record that the parenting time terms are not in the best interests of the child. A child shall have a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that parenting time would jeopardize the child's physical, mental or emotional health. During the time a parent is exercising parenting time, that parent is responsible for all routine decisions affecting the child.

The Michigan Child Custody Act states the judge may consider the following factors when determining the frequency, duration and type of parenting time to be granted:

- (a) The existence of any special circumstances or needs of the child.
- (b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.
- (c) The reasonable likelihood of abuse or neglect of the child during parenting time.
- (d) The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.
- (e) The inconvenience to, and burdensome impact or effect on the child of traveling for purposes of parenting time.

- (f) Whether a parent can reasonably be expected to exercise parenting time in accordance with the Court order.
- (g) Whether a parent has frequently failed to exercise reasonable parenting time.
- (h) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.
- (i) Any other relevant factors.

## **PARENTING TIME ENFORCEMENT**

The Friend of the Court must begin enforcement when it receives a written complaint stating specific facts. This complaint should include dates, times and reasons given about any alleged denial of parenting time. A party has the right to request the Friend of the Court assist in preparing a written complaint about parenting time.

However, the Friend of the Court Office may decline to respond to the alleged violation if (1) it occurred more than 56 days before the complaint is made or (2) the complaining party has made two or more complaints found by the Court to be unwarranted and has failed to pay costs assessed in those actions.

The Friend of the Court initiates enforcement by sending a copy of the complaint to the accused party within 14 days of when the office receives the complaint. The office must take further action if it determines that the alleged violation can be addressed by statutorily-established actions. By statute, the Friend of the Court may apply a makeup parenting time policy, start an action requiring the party to show cause why the Court should not find the party in contempt of its order, file a motion for modification of existing parenting time provisions, schedule mediation, or schedule a joint meeting with the parties.

If the Friend of the Court believes that the parenting time order has been violated, the office may:

- (1) Schedule a meeting with the parties and attempt to resolve the dispute; or
- (2) Refer the parties to a mediator if they agree to mediation.

If both of the above options are unsuccessful, the Friend of the Court shall do one or more of the following:

- (1) Apply local makeup parenting time policy. The Macomb County Circuit Court Family Division Makeup Parenting Time Policy is applied on a case by case basis, which includes but is not limited to all of the following:

- (a) Makeup parenting time shall be the same type and duration of parenting time as the parenting time denied, including but not limited to weekend parenting time for weekend parenting time, holiday parenting time for holiday parenting time, weekday parenting time for weekday parenting time, and summer parenting time for summer parenting time.
  - (b) Makeup parenting time shall be taken within 1 year after wrongfully denied parenting time occurred.
  - (c) The time of the makeup parenting time shall be chosen by the non-custodial parent or party.
- (2) Begin a Contempt of Court action by filing a motion for an order to show cause.

At this hearing, the parent who is requested to appear in Court is required to show "good cause" why they are not obeying the Court's parenting time order.

If the Court decides the parent is in violation of the Court order, the Court can impose penalties. Penalties may include makeup parenting time, fines and incarceration.

- (3) Motion the Court for a change in the existing parenting time order.

Parenting time should be a happy time for the parent and the child(ren). It should be spent in developing a positive environment and stimulate growth for new relationships.

The following recommendations should serve as guidelines, with the hope that parents will cooperate in the "best interest of the child".

Parenting time should be scheduled at times and places convenient and agreed to by both parties. The custodial parent has the obligation of making the child available for parenting time at the agreed time, allowing one-half (1/2) hour lee-way time regarding scheduled parenting time. If the non-custodial parent is more than one-half (1/2) hour late for parenting time, the custodial parent is not required to wait. If there is a delay in picking up or returning the child, the parent should notify the other parent as soon as possible.

When arrangements have been made with the other parent for parenting time, the parent is expected to show up. Children become disappointed easily and will wait the entire weekend before giving up. The non-custodial parent has an obligation to the children and neglecting them can be harmful to their emotional and psychological well-being.

**The Golden Rule can be applied to parenting time, "Do Unto Others As You Would Have Them Do Unto You."**

- (1) Parents should not use the child as a source of information. This can be emotionally upsetting for all concerned and can create problems. Children can learn to "play" parents against each other. Again, communication with the other parent regarding the child's emotional needs can stop unfavorable behavior.
- (2) Follow times set for parenting time. Whether you are the custodial or non-custodial parent, it is important that you show consideration for each other and for the child. Stay with the agreed times unless prior arrangements with the other parent have been made.
- (3) If you are the custodial parent, please do not forget to supply proper clothing for parenting time and tell the non-custodial parent of the child's medication or possible illness. If you are the non-custodial parent, please see that all items sent for parenting time are returned and that any medication necessary is taken on schedule. If the child becomes ill during parenting time, please see that medical attention is sought, and contact the custodial parent.
- (4) If you cannot communicate at all, stick to the agreed schedule. Avoid confrontations or arguments in front of the child. Wait outside the house or in the car.
- (5) As a non-custodial parent, if you do not have a driver's license, a relative or friend must do the driving. As a custodial parent, please note that it may be necessary, due to special circumstances, for a third party to drive your child for parenting time purposes.
- (6) During parenting time, do not tell the child you will have custody of them someday. If you feel a change is in order, take the proper legal steps. If you are a custodial parent, do not threaten your child with cutting off parenting time with the other parent.
- (7) Spend your parenting time with your child. Far too often children are left with relatives, new girlfriends, boyfriends, etc. The child needs time with you. The importance of regular parenting time cannot be stressed enough.
- (8) Do not feel obligated to make parenting time a constant round of movies, ball games, circuses, restaurants, etc. Do some quiet or casual things with your child. Again, if you are the custodial parent do not deny your child the enjoyment of being with the other parent and having fun.
- (9) If you are the non-custodial parent and are having problems with parenting time, you are still obligated to pay support. On the other hand, if you are not receiving child support, you are still required to allow parenting time. **Support and parenting time are not dependent upon each other.**

Parenting time should continue whether support is being paid or not. Support must be paid whether or not parenting time is occurring. If you are having



problems in either area, contact the Friend of the Court Office or seek proper Court action before taking matters into your own hands.

- (10) Both parents should work for agreement in decisions regarding discipline so that one parent is not working against the other's efforts.
- (11) Always work for the emotional well-being, health, happiness and safety of the child.

## **PARENTING TIME QUESTIONS AND ANSWERS**

- **My parenting time order states that I have "reasonable parenting time rights." What does this mean?**

This means that you, as parents, have a responsibility to arrange a schedule of parenting time which is reasonable based upon the best interests of the children and your family situation.

If you cannot agree upon a "reasonable" schedule of parenting time, you have the following options:

- Contact the other parent to see if they will agree to mediation or counseling.
- File a motion on your own or contact an attorney to help you file a motion to change your order to require a specific schedule.

If you are unable to agree upon a reasonable parenting time schedule, and do not file a motion for specific parenting time, the Friend of the Court will enforce the standard parenting time schedule agreed upon by the Family Court bench. Copies of this schedule can be obtained from the Friend of the Court.

- **I have a specific parenting time schedule that I need to change. What can I do?**

If you need a temporary change in your parenting time schedule, try contacting the other parent to arrange for this temporary change.

If you need to make a permanent change:

- See if you and the other parent can agree to a change (stipulation and consent order) and have that change entered as a written order of the Court.
- The Friend of the Court may provide mediation, if both parents agree to participate.
- File a motion with the Court for a change in the order on your own, or contact an attorney to file the motion for you.

- **If the non-custodial parent is not making child support payments, do I have to allow parenting time?**

Yes, parenting time and support are separate parts of a Court order with separate enforcement procedures. (See Support Enforcement section).

- **Clothing is not sent for, or returned from, parenting time. Is there anything the Friend of the Court can do?**

Unless your Court order states each parent's duty to provide clothing, the Friend of the Court has no enforcement power.

- **The other party is not following the parenting time order (e.g. – children not ready on time for parenting time, children are picked up/returned late). What can I do?**

File a written complaint with the Friend of the Court. If the Friend of the Court believes the parenting time order has been violated, they will start enforcement action. (See Parenting Time Enforcement section).

- **Do I have to let the children go for parenting time if it appears that the other parent has been drinking or using drugs?**

That is your decision as a parent. If you deny parenting time in such a situation, you may have to explain to the Court, at a "show cause" hearing, why you felt your decision was in the best interests of the children.

- **I have asked to telephone my children at the other parent's home, (s)he says no. What can the Friend of the Court do?**

The Friend of the Court enforces the written order of the Court. If your Court order does not provide for telephone calls, try to work it out with the other parent. If that is unsuccessful, you may file a motion with the Court requesting telephone access.

- **I am concerned that the other parent is discussing changes in the Court order with the children. Is there anything the Friend of the Court can do?**

Placing children in the middle of their parents' conflict is not suggested. However, unless your Court order forbids discussions, the Friend of the Court lacks enforcement power.

- **The Friend of the Court has refused to enforce my parenting time order. What can I do?**

The Friend of the Court is to provide enforcement of parenting time orders. If you believe the Friend of the Court is not trying to enforce the order, you may file a grievance regarding their procedures. (See Complaints about Domestic Relations Legal System section).

- **Does the Friend of the Court have a responsibility to investigate abuse or neglect of a child?**

No. Alleged abuse or neglect should be reported to the Protective Services unit of your local Family Independence Agency office.

- **I have a parenting time order and my teenage child does not want to come for parenting time. What can I do?**

Parents are to obey Court orders. However, you may want to try the following options:

- Work out a different arrangement with the other parent.
  - Contact the Friend of the Court and request mediation.
  - File a motion with the Friend of the Court asking for a change in your parenting time order.
  - Request the Friend of the Court enforce the parenting time order. (See Parenting Time Enforcement section).
- **Our Court order provides for parenting time, but the other parent refuses to see the children. What can the Friend of the Court do?**

Both parents are to assure that children maintain an ongoing connection with their father and mother. The Court, through its orders, realizes the importance of continued parent-child relationships. However, the Friend of the Court cannot force a parent to exercise parenting time.

## **SMILE PROGRAM**

SMILE – Start Making it Livable for Everyone – is a two-hour educational program for separating/divorcing parents with children under the age of 18. It is sponsored by the Macomb County Circuit Court Family Division and the Friend of the Court, and is facilitated by CARE (Community Assessment Referral & Education). Parents who have a pending divorce in Macomb County receive a letter signed by their assigned judge inviting them to the next SMILE presentation. SMILE is an educational opportunity for parents to learn ways to make the divorce experience less painful for their children. It is also an opportunity for parents to learn about resources in their community that can help their children through this difficult time. Further information may be obtained by calling CARE at 586-541-0033, or visiting the CARE web site at [www.careofmacomb.com](http://www.careofmacomb.com).

## **SUPPORT ORDERS**

A support order is any order entered by the Circuit Court Family Division which requires the payment of support.

Support may include:

- Child support
- Spousal support (alimony)
- Payment of medical, dental and other health care
- Educational expenses
- Payment of confinement expenses
- Payment of child care expenses

All support orders must be stated in a monthly amount which is due on the first day of the month. When an order takes effect on a day other than the first day of a month, or ends on a day other than the last day of the month, the support amount must be prorated for the partial month. Support is past due if it is not paid by the last day of the month in which it became due.

## **Support Investigations and Reports**

The Friend of the Court has an obligation to regularly review child support, including health care provisions and motion the Court for a change in the order, if a change is warranted.

Otherwise, when directed by the judge, the Friend of the Court will conduct a financial investigation and make a written report and recommendation to the parties (or their attorneys) and the judge regarding child support. Friend of the Court reports cannot be used as evidence in Court without the agreement of both parties. The Friend of the Court investigator may be called as a witness to testify about their report.

## **Child Support Formula**

Michigan law requires that the child support formula be used by the Friend of the Court or Prosecuting Attorney when recommending, and by judges when ordering, child support amounts. The Friend of the Court's recommendation and the judge's determination can only vary from the formula when there is clear reason, either in writing or on the Court record, stating why use of the formula would be unjust or inappropriate.

In Michigan, the child support formula considers both parents' incomes when establishing or changing support.

For more information about the child support formula currently in use, you may contact the Friend of the Court or your attorney. A copy of the guideline manual may also be available at your local library.

The formula, and the Guideline computer program for calculating support may be found at the Michigan Supreme Court's web page <http://www.courts.michigan.gov/scao/services/focb/focb.htm>).

## **Accounting**

Unless otherwise ordered, support is paid through the Friend of the Court or the State Disbursement Unit (SDU).

The Friend of the Court must forward support to the recipient within 14 days of the date the support is received by the Friend of the Court. When the SDU receives support, it must forward that support to the recipient within 2 business days of receipt.

Once a year, upon written request, the Friend of the Court will provide the parties with a statement of account, free of charge.

Payments for support must be made by income withholding, personal check, money order to the Michigan State Disbursement Unit. At the time of payment, please include your case number and social security number. Cash payments will be accepted at the Friend of the Court Office. Do not send cash through the mail.

## **Statutory Service Fees**

Michigan law requires the Friend of the Court to charge the payer of support a fee on all child support orders as a partial offset of administrative costs. The current fee is \$42.00 per year.

## **Surcharge on Overdue Support**

Public Act 141 of 1995 requires the Friend of the Court to levy an annual surcharge of 8% on all support payments that are past due as of January 1 and July 1 each year.

This law, effective January 1, 1996, means that every January 1 and July 1, the Friend of the Court Office will add a surcharge equal to one-half of 8% to all support arrearage amounts. For example, if there is an arrearage of \$1,000 on January 1, a surcharge equal to one-half of 8%, or about \$40, will be added to the arrearage amount due. This surcharge is added to all past due support, except for support ordered under the paternity act for the time period before the date of the original order.

Any surcharge collected for support due the custodial parent will be paid to that parent. Any amounts due the State of Michigan, for the period of time the child(ren) and custodial parent receive TANF or FIP benefits, will incur a surcharge payable to the State.

## **SUPPORT ENFORCEMENT**

The Friend of the Court will begin enforcement action when past due support reaches an amount equal to one month of support. This is done without waiting for a complaint or request for enforcement.

### **Automatic Support Enforcement**

The Friend of the Court has many options available to provide enforcement on a delinquent support order. The options include:

- **Immediate Income Withholding**

Income withholding directs the payer's (person required to pay support) employer or other source of income to withhold support from his or her paycheck and remit that to the State Disbursement Unit for support.

Every support order entered after December 31, 1990 (whether it is a new support order that is entered, or an old support order that is changed), must include a provision for immediate income withholding. A payer subject to immediate income withholding does not have to fall behind before income withholding takes place.

In some limited cases, an order of income withholding will not take effect immediately. To delay income withholding, the Court must find that "good cause" exists based upon at least all of the following:

- The Court makes a specific written finding that income withholding is not in the best interests of the child(ren).
- All previously ordered support has been paid on time.
- The payer agrees to keep the Friend of the Court informed of the name, address, and telephone number of his/her current source of income, and specific information on any health care coverage available to him/her through employment, or that is being maintained.

**OR**

The parties enter into a written agreement that is approved by the Court and provides that the order of income withholding will not take effect immediately, but that an alternative payment arrangement has been made. The payer shall keep the Friend of the Court informed of the name, address, and telephone number of his/her current source of income, and specific information on any

health care coverage available to him/her through employment, or that is being maintained.

For support orders entered before January 1, 1991, which remain unchanged, the law states that automatic support enforcement (including income withholding) will start when the payer gets more than a month behind in support payments.

Income withholding tells the payer's employer or other source of income to withhold support and send it to the State Disbursement Unit. In addition to current support, the notice will also instruct that fees and an arrearage amount be withheld and sent. The Friend of the Court may increase the amount to be collected for arrearage if a payer's arrearage increases. The payer will be notified if this occurs, and has a right to an administrative hearing at that time.

The Friend of the Court may increase the amount to be collected for arrearage if a payer's arrearage increases. The payer will be notified if this occurs and has a right to an administrative hearing at that time.

If a payer lives or moves out of state and gets behind in support payments, the Friend of the Court may begin interstate income withholding. (See Interstate section).

- **Contempt of Court (Show Cause) Hearing**

If support is not paid on time, the Friend of the Court may begin a civil contempt action (known as a "show cause" hearing), by filing papers requiring the payer to appear in Court.

If, at the hearing, the Court finds the payer in contempt, the Court may require a payment toward child support or commit the payer to jail. If it appears to the Court that the payer may be confined to jail, the Court is required to appoint an attorney for payers who cannot afford private counsel.

If a payer does not appear for a "show cause" hearing, the judge may issue a bench warrant for the payer's arrest, so that (s)he may be brought before the Court.

Once a bench warrant is issued, the duty to arrest usually lies with the local law enforcement agencies. A bench warrant issued for failure to appear for a contempt of Court hearing is only valid within the State of Michigan.

- **Income Tax Intercept**

If back support is owed, the Friend of the Court must request an income tax intercept for cases that qualify under the Federal IV-D program.

An income tax intercept is where any tax refund due the payer of support is sent to the State Disbursement Unit and applied to back support owed for minor children. If

there is any child support due the State, the income tax intercept must first be applied to the unpaid amount owed to the State of Michigan.

- **Liens**

In some cases, the Friend of the Court may be able to obtain a lien on a payer's real or personal property.

A lien may be imposed when:

- (1) There have been many lapses in payments; or
- (2) A large arrearage exists; or
- (3) Efforts to collect current support are successful, but efforts to collect past due amounts have been unsuccessful; or
- (4) The youngest child is over 18 and arrearages cannot be collected in a reasonable period of time; or
- (5) The person owing the money would benefit from not having a lien imposed.

- **Cash Performance Bonds**

A cash bond is a payment of a specific amount of money to guarantee that future support payments will be made.

A cash bond may be required when:

- (1) There is a large arrearage or a history which shows the payer cannot be relied upon to keep support payments current; or
- (2) The payer has threatened to sell assets to avoid payment of future support.

- **License Suspension**

For payers with an arrearage of six or more months of support, the Friend of the Court may initiate action to have occupational, sporting, or driver's licenses suspended. A payer can avoid a license suspension by showing that there is a mistake regarding the amount of the arrearage or by entering into an agreement accepted by the Court for the payment of the arrearage.

- **Consumer Reporting**

A Consumer Report will let potential grantors of credit know the payer has child support owing, and may result in denial of credit to that person.



- **Criminal Enforcement of Support**

Under federal and state law, failing to pay child support may be a felony. Friend of the Court Offices cannot bring felony charges. State charges are filed and prosecuted by local county prosecutors. Federal charges are filed and prosecuted by the United States Attorney's Office. The federal government has established a special program to investigate and prosecute cases where the payer fails to pay support for a child, and the child and payer live in different states.

- **Health Care Enforcement**

One or both parents are responsible for providing health care coverage for the parents' children. If a parent is required to provide coverage, has coverage available through employment, and fails to provide coverage, the Friend of the Court will send a medical support notice to the parent's employer. The employer then is required to deduct premiums for the coverage.

Not all health care expenses will be paid by a health care plan. Support orders require each parent to pay a percentage of remaining health care expenses. The Friend of the Court will assist in collecting the payments required by the Court's order if the costs exceed the limits set in the support order and the parent incurring the cost has done the following:

- Requested payment for the other parent within 28 days of receiving an insurance payment or a determination that the expense is not covered.
- Payment was not made within 28 days of the request to the other party.
- The Friend of the Court's assistance is requested within one year of incurring the expense, within 6 months of denial of coverage of the expense, or within 6 months after the other parent fails to pay the expense as agreed.

If the Friend of the Court receives a request for help which meets the requirements, the Friend of the Court must send a copy of the request to the other party, along with notice that if no objection is filed within 21 days the amount will become a support arrearage subject to any enforcement process. If an objection is filed, the Friend of the Court must schedule a Court hearing to resolve the dispute.

## **MODIFICATION OF A SUPPORT ORDER**

The Friend of the Court will review child support orders. This review is automatic in all cases. Also, non-public assistance cases may file a written request.

## **NOTICE PURSUANT TO MCL 552.517(B)(1)**

If you are a party to a domestic relations action and a final judgment has been entered, you have the right to request a review of child support or health insurance by contacting

the Friend of the Court, in writing, and requesting a review. Within 15 days of the date the office receives your request, they will determine if your case is due for a review. The Friend of the Court is not required to investigate more than 1 request received from either party each 24 months.

Within 180 days after determining a review is required, the Friend of the Court will send notice, conduct a review, and obtain modification of the order, if appropriate.

If the Friend of the Court determines that no change in the order is warranted, then within 30 days of this determination, they shall advise the parties. If either party objects, the Friend of the Court will schedule a hearing before the Court on this objection.

### **Threshold for Modification**

A "minimum threshold" has been established for child support to be changed. This threshold is the lesser of 10% or \$5.00 per week. If the difference between the current support amount and the proposed support amount is at least 10% or \$5.00, whichever is less, the Friend of the Court will motion the Court for a change. If the difference between the current amount and the proposed amount is less than the minimum threshold, the Friend of the Court is not required to motion for a change.

The Friend of the Court, or either party, may still file a motion for a change in support, even if the minimum threshold is not met.

### **Support Modification Actions Started by Parties**

A party can file their own motion for a change in their support order. This is known as an In Pro Per, or Pro Se, support modification. The Office of the Friend of the Court will provide forms and written instructions to any party who wishes to file their own motion without the benefit of an attorney.

A party may also contact an attorney to file a motion requesting a change in the amount of support.

If both parents agree to change the support order to the amount shown by the child support formula, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the County Clerk, it will become an order of the Court.

### **Non-Retroactive Modification of Support**

Michigan law does not allow for retroactive modification of child support. This means that once child support is charged, it is due and payable and cannot be changed.

If your financial situation changes, you may immediately file a motion for change in the support amount.

If it has been more than 24 months since support was established or last changed, you may request that the Friend of the Court review the amount of support ordered. (See Notice pursuant to MCL 552.517(b)(1)).

## **SUPPORT QUESTIONS AND ANSWERS**

- **How do I get an order for child support?**

A motion asking the Court to order child support must be filed with the Court. If both parties agree to establish support at the amount shown by the formula, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge and filed with the County Clerk, it will become an order of support.

- **Do I need an attorney to get an order for support?**

You are not required to have an attorney to file a motion for support in a divorce case. An attorney may be helpful when filing papers and following specific rules. In paternity and family support cases, the Prosecuting Attorney may be able to assist you with the filing of a motion for support.

- **Can I receive child support after my child reaches age 18?**

Absent agreement of the parties, child support can continue past age 18 only if certain conditions are met. Support may continue up to age 19-1/2 if the child "is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the payee of support or at an institution."

- **Do the Friend of the Court and the judge have to use the child support formula?**

The Friend of the Court, when making a recommendation and the judge when making a determination must use the child support formula. Varying from the formula may happen when there is clear reason in writing or on the record why using the formula is unjust or inappropriate.

- **If I have been paying my child support and the custodial parent is not allowing parenting time, do I have to keep paying child support?**

Yes. Parenting time and support are separate parts of a Court order with separate enforcement actions. (See Parenting Time Enforcement section).

- **The other parent is not paying support as ordered. What can I do?**

Contact the Friend of the Court for enforcement if the back support equals one month of past due payments. You may also contact an attorney to start enforcement action.

- **The payer of support is self-employed and not making their support payments. What can the Friend of the Court do?**

Income Withholding Orders may not always be effective when a payer is self-employed. In these cases, the Friend of the Court may:

- Motion the Court for Contempt of Court (show cause) hearing.
- Submit the payer for an income tax intercept.
- File a lien on the payer's real or personal property.
- Motion the Court for a cash performance bond to be posted by the payer to guarantee future payments are made.
- Report the payer to consumer reporting agencies.
- Motion the Court for suspension of professional license or driver's license.

Contact your Friend of the Court Office for further information concerning these options.

- **My Court order states I am to pay support through the Friend of the Court or State Disbursement Unit. Can I pay the other parent directly?**

No. Not without changing your order.

Support is paid through the Friend of the Court or State Disbursement Unit to maintain a formal record of payments and to assure support is paid to the proper recipient.

- **If child support has been ordered and either party has an increase or decrease in income, what can be done?**

The child support formula requires the Friend of the Court and the Circuit Court judge to consider both parents' incomes when making recommendations and establishes a minimum threshold necessary to warrant a change.

If either parent has a change in income, they may contact the other parent to see if they will agree to change the order to the child support formula amount. If the other parent is unwilling to change the order, the Friend of the Court may be contacted in writing with a request for a review, or a motion may be filed with the Court. (See Modification of a Support Order section).

- **If I am receiving public assistance (TANF) or (FIP), do I still get child support?**

No. Child support payments made while you are on FIP must be sent to the Michigan Family Independence Agency by the Friend of the Court.

If payments are made, you qualify to receive the first \$50.00 per month, plus any child support paid which is over and above the amount of your FIP grant. This money is processed through, and paid by, the Michigan Family Independence Agency.

If you have questions regarding this program, contact your Family Independence Agency support specialist.

- **Is the Friend of the Court responsible for making sure that child support money is being spent on the children?**

No. The law does not give the Friend of the Court the authority to verify how child support payments are being spent.

- **Will support be modified if the payer is in jail or prison?**

Michigan law requires support to be set according to the child support formula, which considers the parties' incomes. Therefore, an incarcerated payer's support obligation might be modified if a motion to modify support is filed. That motion may be filed by either party or the Friend of the Court Office.

## **QUESTIONS REGARDING MISCELLANEOUS ISSUES**

### **Change of Domicile**

- **My order states that I cannot permanently move my children from the state of Michigan without approval of the Court. How do I get the Court's approval?**

Parties may agree to a change of domicile by signing an agreement. Once this agreement is put in the form of an order, signed by the judge and filed with the County Clerk, it will become an order of the Court.

If you and the other parent cannot mutually agree upon a change of domicile, you may:

- (1) Contact the other parent and see if they will agree to mediation; or
- (2) File a motion on your own or contact an attorney to help you file the motion.

Notifying the Friend of the Court or filing a motion does not allow you to move your children from the state. You must obtain a Court order granting this change prior to moving from the state.

## **Enforcement of Judge's Verbal Ruling**

- **Why won't the Friend of the Court enforce what the judge said in Court, even if it's not in the written order?**

The Court speaks through its written orders. The Friend of the Court can only enforce the written order.

If you feel a Court order does not agree with what the judge said, order the transcript, bring your concerns to the attention of the person who prepared the written order, and request a change.

## **Property Settlement**

- **Can the Friend of the Court enforce the property settlement provisions contained in my Judgment of Divorce?**

The Friend of the Court is required to enforce custody, parenting time and support provisions of orders. The Friend of the Court lacks power to enforce property issues. The Court has the ability to enforce its own order. You may file a motion with the Court if there is a need for property settlement enforcement.

## **Referee**

- **What is a Friend of the Court Referee and what can they do?**

A referee is an attorney who hears motions, holds hearings, examines witnesses and makes recommendations to the Court.

A referee can either be the Director of the Friend of the Court or an attorney designated by the Family Court.

The Chief Judge of a Family Court may appoint a referee to hear any domestic relations action, except an increase or decrease in spousal support (alimony).

A referee hearing is different than a Court hearing. The findings of a referee are recommendations to the Court, and are not final. However, a referee's recommendation will become a Court order if neither party files an objection within 21 days. Parties may stipulate to a binding referee hearing.

State law requires that any written report and recommendation prepared by a referee be given to the parties and their attorneys before the judge takes action on the recommendation.

If a party disagrees with a referee's recommendation, (s)he has the right to a de novo (a new) hearing before the judge. The objection to the referee's recommendation, and a request for hearing, must be made within 21 days from the

time the recommendation is mailed (a request for hearing on an income withholding order must be made within 14 days).

Contact the Friend of the Court Office for an explanation of the way which an objection and request for hearing should be filed.

### **Access to Friend of the Court Records**

- **I want to review my Friend of the Court file. How can I request this?**

Parties, or their attorneys, must be given access to all information in their Friend of the Court records that is not confidential. Confidential information is defined by the Michigan Rules of Court. "Confidential information" means:

- (a) Staff notes from investigations, mediation sessions and
- (b) Settlement conferences;
- (c) Family Independence Agency protective services reports;
- (d) Formal mediation records;
- (e) Communications from minors;
- (f) Friend of the Court grievances filed by the other party;
- (g) A party's address or other information if release is prohibited by Court order; and
- (h) All information classified as confidential by Title IV-D of the Social Security Act.

The Friend of the Court may charge a fee for copying any records.

If the Friend of the Court denies you access to records regarding your case, you may file a motion with the Court for an order of access.

- **Can other persons access my Friend of the Court file?**

A Friend of the Court file is not a matter of public record. However, certain other persons are allowed access to Friend of the Court files in order to perform their responsibilities. Among those persons, 1998 PA 551, MCL 552.504 b, requires each Friend of the Court Office to allow Citizens Advisory Committees access to some case records of parties who have filed a grievance with the Citizen Advisory Committee and information pertaining to a random sampling of grievances filed with the office. A Citizen Advisory Committee member who discloses case record information is guilty of a misdemeanor.

## **Access to Other Records**

- **Can I access school, medical, and other records if my child lives with the other parent?**

Michigan law provides that a parent has the right to access certain records or information about his or her child regardless of the custody arrangement. Records or information which may be accessed include medical, dental, and school records, day care provider records, and notification of meetings regarding the child's education.

The Friend of the Court has no authority to enforce this law against schools, health care providers, or others who refuse to provide the records. You may wish to contact an attorney if you are denied this right.

## **Adoptions, Marriages and Other Acts of Emancipation**

- **What happens to my child support order and any support that may be owed if my minor child is adopted, marries, or enters the military service?**

Upon entry of a Court order, child support will stop when children are adopted, marry or enter the military service. Copies of adoption orders, marriage records or military service records must be provided to the Friend of the Court.

Any amounts owed must still be paid. Contact the Friend of the Court to make arrangements to pay or collect any money owed.

## **Parent Locator**

- **What can the Friend of the Court do to find a missing parent?**

The state and federal governments have a parent locator service, which can be used to locate a parent:

- To collect child support;
- To decide or enforce a child custody or parenting time matter; or
- To enforce state or federal law with respect to the unlawful taking or restraint of a child.
- To use the parent locator service, the following information is helpful:
  - (1) The full name, date of birth, and Social Security number of the absent parent; and
  - (2) The last known address of the absent parent.



## **Citizen Advisory Committees**

- **What is the Citizen Advisory Committee and what does it do?**

Each county is required to appoint a Citizen Advisory Committee. The committees are required to meet at least 6 times a year and to advise the county board and chief judge about the duties and performance of the Office of the Friend of the Court and the community's needs relating to office services.

The committee may review any grievances filed with it, which complain about Friend of the Court office operations. It also reviews some other grievances filed with the Friend of the Court Office, as well as the office's responses.

- **Who serves on my county's Citizen Advisory Committee?**

The county board of commissioners, or where applicable, the county executive, appoints public members of the Citizen Advisory Committee. To be appointed, a person must live in the applicable county. The county is to appoint a person from each of the following categories: an advocate for children, a representative of non-custodial parents, a representative of custodial parents, an attorney who engages primarily in family law practice, a mental health professional who provides family counseling, and someone who does not fit into any of the other categories.

In addition to the public members, the county's sheriff, prosecutor, and Family Independence Agency director are to appoint representatives from their offices to serve on the Citizen Advisory Committee.

## **COMPLAINTS ABOUT THE DOMESTIC RELATIONS LEGAL SYSTEM**

### **Friend of the Court**

- **How do I file a complaint about the Friend of the Court?**

The Friend of the Court Act provides a grievance procedure that a party can use when they have a complaint about Friend of the Court operations or employees. A grievance cannot be used to object to a Friend of the Court recommendation or to disagree with the decision of a judge.

You can file a grievance with the Friend of the Court in two ways:

- (1) By filing a grievance form, which you can get from your Friend of the Court Office or on the web at [www.courts.mich.gov/scao/domesticrelations/focgeneral/foc1a.pdf](http://www.courts.mich.gov/scao/domesticrelations/focgeneral/foc1a.pdf); or

- (2) Stating your concerns by writing a letter to the Friend of the Court and clearly identifying your letter as a grievance.

The Friend of the Court must investigate and respond to your grievance within a reasonable period of time, usually thirty days.

If you are not satisfied with the response of the Friend of the Court, you may file the same grievance with the Chief Circuit Court judge.

The Chief Circuit Court judge is required to investigate and respond to your grievance within a reasonable period of time.

The above Friend of the Court grievance procedure ends with the Chief Circuit Court judge.

You may also file a grievance concerning Friend of the Court office operations with the Macomb Citizens Advisory Committee. The committee, in its discretion, may conduct a review or investigation or may hold a formal or informal hearing on the grievance.

## **Court Order**

- **How do I file a complaint about my Court order?**

Court orders are not covered under the Friend of the Court Act.

Contact your attorney to discuss your legal options such as a motion for rehearing or filing an appeal with a higher Court.

## **Judge or Referee**

- **How do I file a complaint about the conduct of a judge or referee?**

The Judicial Tenure Commission was created to review complaints about alleged misconduct of a judge. Anyone who has serious concerns about the conduct of a judge or referee can contact:

Judicial Tenure Commission  
3034 W. Grand Blvd.  
STE 8-450  
Detroit, Michigan 48202  
(313) 875-5110

Complaints concerning your Court orders or referee recommendations should not be sent to the Judicial Tenure Commission. It cannot change the content of a Court order or a referee's recommendation.

## **Attorney**

- **How do I file a complaint about my attorney?**

The Attorney Grievance Commission was created to investigate complaints of misconduct by Michigan attorneys.

Anyone who has serious concerns about the behavior of an attorney can contact:

Attorney Grievance Commission  
Marquette Building, Ste. 256  
243 West Congress Street  
Detroit, Michigan 48226  
(313) 961-6585

## **GLOSSARY OF FREQUENTLY USED TERMS:**

**Abatement** – To stop, reduce, diminish, or temporarily suspend.

**ADC or AFDC** – Abbreviation for Aid to Families with Dependent Children. Replaced by Temporarily Assistance to Needy Families (TANF) or Financial Independence Program (FIP).

**Adjournment** – Postponing or putting off of a case or session of Court until another time or place.

**Adjudication** – a judge's final decision, which is put into a judgment or a decree in a civil case.

**Adoption** – The act by which a person takes the child of another into his or her own family and makes the child, for all legal purposes, his or her own child.

**Adversary Proceedings** – Actions contested by opposing parties.

**Affidavit** – A written statement of fact that is verified by oath or affirmation.

**Aid to Families with Dependent Children** – A program of public assistance to families, administered in Michigan by the Family Independence Agency. Replaced in Michigan by the Financial Independence Program (FIP), also called Temporary Assistance to Needy Families (TANF) by the federal government.

**Alimony** – *See Spousal Support.*

**Alternative Dispute** – A method to resolve disagreements without the direct intervention of the Court. *See Arbitration, Conciliation, Mediation.*

**Appeal** – An application to a higher Court to change the judgment of a lower Court.

**Appearance** –

- (1) Coming into Court; the formal act by which a defendant submits to the jurisdiction of the Court.
- (2) Document identifying one who is representing himself or another. An attorney files an "appearance" making it known that (s)he is representing an individual.

**Arbitration** – A procedure for the determination of a disputed matter. Legally binding, as opposed to mediation.

**Arrearage** – Money which is overdue and unpaid.

**Attorney** – A lawyer; a person admitted to legal practice who is qualified to represent the legal interests of another person.

**Bail Bond** – A financial obligation, which guarantees a person's future appearance before the Court.

**Bench Warrant** – An order issued by the Court (from the bench) for the arrest of a person, so that they may be brought before the Court.

**Binding Mediation** – A procedure used to determine a disputed matter. The Mediator's decision is binding upon parties. *See Arbitration.*

**Burden of Proof** – The duty to establish facts in a dispute. In civil matters, this burden may be a "preponderance of the evidence" or "clear and convincing evidence".

**Caseload** – The number of cases a Friend of the Court case worker handles at any given time.

**Certified Copy** – A copy of an order signed and certified as an exact true copy by the officer of the Court having possession of the original order.

**Change of Venue** – Transfer or removal of a case to a Court of another geographical location and jurisdiction, either because it should have been there in the first place, or for the convenience of the parties or witnesses, or because a fair trial cannot be had in the original Court location.

**Chief Judge** – In Courts with two or more judges, one judge is selected as chief judge. The chief judge is the director of the administration of the Court.

**Child Abuse/Neglect** – Mistreatment of a minor by an adult legally responsible for the minor.

**Child Born Out-of-Wedlock** – A child born to a woman who was not married from the conception to the date of birth, or a child which the Court has determined to have been born or conceived during a marriage, but is not the husband's child.

**Child Support** – Payment of money for a child in a divorce, paternity, or family support act proceeding. Support includes health care and may include educational expenses.

**Child Support Formula** – Factors considered by the Friend of the Court and the Prosecuting Attorney when making a recommendation, and the Family Court when making a determination for an appropriate amount of child support. Both parents' incomes are considered under the formula.

**Child Support Guidelines** - *See Child Support Formula.*

**Circuit Court** – The trial Court in Michigan which hears many types of cases. Domestic relations actions are tried in the Family Division of this Court.

**Citizens Advisory Committee** – A group appointed to advise the county and Circuit Court judges regarding the activities of the Friend of the Court Office.

**Commit** – The act of sending a person to jail, pursuant to a Court order.

**Complaint** – The original pleading in a domestic relations matter in which the plaintiff alleges the bias for the suit.

**Conciliation** – A method of Alternative Dispute Resolution used by many Friend of the Court Offices. The conciliator attempts to assist parties in resolving disputes, but may prepare a recommendation if the parties are not able to reach agreement on issues. *See Mediation.*

**Contempt of Court Hearing** – Also known as a “show cause” hearing. A Court hearing in which the person alleged to be in violation of the Court order has the opportunity to show good cause why (s)he did not obey the order.

**Counsel** – An attorney.

**Custody** – Care and keeping of anything of anyone, e.g. children in a domestic relations action.

**Defendant** – The person against whom a lawsuit is started.

**Delinquent** – In regards to child support, an amount owed but not paid. *See Arrearage.*

**Department of Social Services** – Now known as the Family Independence Agency.

**Dismissal** – A Court order terminating a particular case.

**Divorce** – The legal termination of a marriage.

**Domestic Relations** – Any action involving families. Divorce, paternity and family support actions are all considered domestic relations actions.

**Domicile** – The permanent home to which a person, when absent, always intends to return. *See Residence.*

**DSS** – An abbreviation for the Michigan Department of Social Services. Now known as the Family Independence Agency.

**Emancipation** – The act by which one attains adulthood. Emancipation may occur when a child reaches the age of majority, marries, enters military service, or by Court order.

**Enforcement** – Activity engaged in by the Friend of the Court to bring an alleged violator of a Court order into compliance.

**Evidence** – Proof allowed at a hearing. Evidence may be presented through testimony of witnesses and by documents, records and other material.

**Ex Parte** – On the request of one party only, without notice to any other party.

**Ex Parte Order** – An order made by the Court upon the request of one party to an action without notice to the other party.

**Fair Consideration** – A payment which represents the value of the property or service transferred.

**Family Court** – Judge or judges within the Circuit or Probate Court of a county assigned to hear all domestic relations actions including, but not limited to, divorce, paternity, family support, juvenile.

**Family Independence Program** – Program of public assistance administered by the Michigan Family Independence Agency (FIA).

**Fees** – A charge fixed by law for services.

**FIA** – An abbreviation for the Michigan Family Independence Agency.

**File** – To put in the records of the Court.

**Filing** – The act of recording the various legal documents regarding a suit with the Clerk of the Court.

**FIP** - The abbreviation for the Michigan Family Independence Program.

### **Friend of the Court**

- (1) An Office of the Family Court; investigates and makes recommendations to the Court in domestic relations actions involving minor children; enforces orders of the Court; collects, records and disburses support payments.
- (2) A person; the director of the office.

**Garnishment** – A Court order to take part of a person's wages or other money owed to him/her before (s)he receives the money because of an unpaid debt owed a creditor.

**Guardian** – The person who has a legal duty and power to take care of another person who by age, or incompetence, is unable to care for him/herself.

**Guardian Ad Litem** – A person appointed by the Court during the course of a litigation for the purpose of protecting the interests of an infant or incompetent adult.

**Hearsay** – A statement made by a person who is not in Court, which is repeated in Court to prove a fact. Most hearsay evidence is not allowed as evidence in Court.

**Inactive Case** – A case over which the Friend of the Court will not initiate enforcement or other services.

**Income Withholding Notice** – An order of the Court which directs an employer, or source of income, to withhold a fixed amount and send that amount to the Friend of the Court/Michigan State Disbursement Unit (MiSDU) for purposes of support.

**Joint Custody** – An order of the Circuit Court which provides:

- (1) Parents will share in major decisions affecting their children (joint legal custody).
- (2) Children will live with one parent part of the time and the other parent part of the time (joint physical custody).

**Judicial Tenure Commission** - The panel which reviews and investigates complaints against judges, and makes recommendations to the Supreme Court for discipline or removal, if appropriate.

**Judgment** – The decision of a Court.

**Jurisdiction** – The power of the Court to decide cases before it. This power depends on the type of case and how closely connected the parties are to the county where the Court is located.

**LEIN** – Law Enforcement Information Network. A computer system containing files on wanted persons.

**Lien** – A claim against real or personal property. The owner cannot sell the property without first paying the debt. It also subjects the property to seizure and sale.

**Litigant** – A party to a legal action.

**Litigation** – The process of resolving a dispute in Court.

**Mediation** – A process parties can use to reach their own agreements without going to Court. The Friend of the Court provides mediation services when there is a dispute regarding custody or parenting time.

**Minor** – A person under the age of 18 years.

**Motion** – A formal request made in writing to the Court.

**Mutual Agreement** – An agreement reached by parties on their own free will without duress or coercion.



**Office of Child Support** – The office within the Family Independence Agency that administers Federal child support program funds, coordinates location of absent parents and manages the process for income tax intercepts. This office may also initiate complaints under the Paternity Act and the Family Support Act.

**Order** – A decision of the Court made in writing.

**Parenting Time Order** – An order that establishes time between the children and the parent with whom they do not primarily reside.

**Party** – A person legally involved in a particular action.

**Paternity Suit** – An action to prove who is the father of a child born out of wedlock.

**Payee** – The person or agency to whom support is sent. Also known as recipient.

**Payer** – The person who is ordered to pay support.

**Petition** – *See Motion.*

**Plaintiff** – The person who originally files the action.

**Pleadings** – Papers filed by parties in a lawsuit stating their claims and defenses against each other.

**Power of Attorney** – A written instrument appointing and authorizing a person to act in the place of another as agent or substitute.

**Pretrial Conference** – Informal hearing between the judge and attorneys (and sometimes parties) to discuss any matters that can be resolved prior to a Court hearing.

**Probate Court** – The Court which handles wills, estates, and commitment of mentally ill persons. In accordance with a Family Division plan, a Probate Court judge may be appointed by the Chief Circuit Court judge to act as Family Division judge.

**Pro Per** – A person who represents himself or herself in Court without an attorney. Also known as Pro Se.

**PS** – An abbreviation for the Protective Services unit of the Family Independence Agency.

**PSA** – Public Service Announcement. As used in this handbook, these are brochures available to the public.

**Recipient** – A person or agency to whom support is paid. Also known as payee.

**Reciprocity** – Term for reciprocal arrangements between countries to allow for non-support actions against parents in certain other countries.

**Reconciliation** - An attempt by parties to a domestic relations action to work out their differences and remain a family unit.

**Referee** - A person who hears motions, holds hearings, takes testimony, and makes recommendations to the Court. A referee may be the Director of the Friend of the Court, or an attorney appointed by the Court to hear domestic relations actions.

**Residence** – The place where one presently lives.

**RURES**A – An abbreviation for “Revised Uniform Reciprocal Enforcement of Support Act”. Pertains to non-support actions against a parent in another state. Replaced by the Uniform Interstate Family Support Act (UIFSA).

**Show Cause Hearing** – A Court hearing which is held so that a person can present reasons why (s)he should not be considered in violation of a specific Court order. Also known as a “Contempt of Court” hearing.

**Sole Custody** – An order of the Court which provides that children reside with one parent, and that parent is responsible for all decisions affecting them.

**Spousal Support** – Payment of money for a spouse or former spouse in a divorce, separate maintenance or family support act proceeding.

**State Disbursement Unit (SDU)** – A state office which collects and distributes support payments in accordance with the Court’s orders.

**Statute of Limitations** – In civil matters, the time limit on the right to seek relief in Court for damages.

**Statutes** – Laws of the State of Michigan enacted by the Legislature.

**Stipulation** – A mutual agreement between parties or their attorneys which resolves a particular issue.

**Summons** – A notice given to a party that a Court action has been started against them.

**Support Order** – An order issued by the Court ordering the payment of money for children or spouse in a domestic relations action.

**Supreme Court** – The Court of last resort in Michigan, the highest appeals Court in the state.

**Surcharge** – Additional support added to support which is not paid timely.

**Suspension** – To stop or abate.

**TANF** – Temporary Assistance for Needy Families. Replaced Aid to Families with Dependent Children (AFDC or ADC). In Michigan, known as Financial Independence Program (FIP).

**Testimony** – The statement of a witness under oath which is given as evidence.

**Transcript** – A word for word record of proceedings at a hearing.

**UIFSA** – An abbreviation for “Uniform Interstate Family Support Act”. Pertains to support actions involving parents living in different states.

**Waive** – To give up a right, claim or privilege.

**Warrant** – A paper issued by a judge which allows police to arrest a person. See *Bench Warrant*.

**Witness** – One who testifies to what (s)he has seen, heard or otherwise observed.

**Venue** – The county in which proceedings may be commenced. Also, see “Change of Venue”.

# **POLICIES AND PROCEDURES OF THE 16<sup>th</sup> JUDICIAL FAMILY COURT**

The following policies and procedures operational within the Macomb County Friend of the Court Office have been reviewed and approved by the judges of the Sixteenth Judicial Family Court.

## **Friend of the Court Fees**

Pursuant to statute, a Friend of the Court filing fee will be required in all domestic cases involving minor children and said fee will be assessed as follows:

A \$30.00 Friend of the Court filing fee is to be paid to the County Clerk's Office upon filing of a complaint for divorce involving minor children. An additional \$20.00 mediation fee will be charged in all cases where mediation services are provided before judgment. Mediation services will not be provided until the fee is paid. Pursuant to local policy, the Friend of the Court will submit a recommendation on the questions of custody, support, parenting time, health care and child care in all divorce cases involving minor children prior to the rendition of a judgment of divorce. A \$40.00 investigative fee will be charged for the investigation and recommendation and must be paid on or before the date of the taking of the judgment of divorce. At no time will the total Friend of the Court fee exceed \$70.00.

## **Ex Parte Interim Relief**

An ex parte interim order of support, custody, parenting time and attorney fees may be obtained immediately upon filing of a complaint. Any other relief sought would require an appropriate motion being filed in the Family Court requesting said additional relief.

## **Mediation**

The Friend of the Court staff provides informal mediation services to resolve custody and parenting time disputes. Informal mediation is conducted by custody investigators, judicial service officers, and referees. If you seek formal mediation, you may contract to have a private mediator resolve your custody and parenting time disputes.

## **Child Support Adjustments**

In all post-judgment cases wherein an order of support has been established, the support order may be modified if the payer becomes unemployed or disabled. The payer of child support must personally appear in the Friend of the Court Office and document the unemployment or disability and reduced earnings. At that time, a motion to adjust support arrearages may be filed on behalf of the payer, setting forth the existing financial circumstances and the reduced support amount. Copies of this motion will be mailed to both the payer and payee by the Friend of the Court Office. The payer

shall notify the Friend of the Court when (s)he returns to employment. Upon receipt of this notification, the Friend of the Court will present to the Circuit Court an ex parte order adjusting the arrearages of the child support account based upon the unemployment/disability. A true copy of the ex parte order will be mailed to the payer and payee by the Friend of the Court. If the payee objects to the motion to temporarily reduce child support or the ex parte order, the Friend of the Court will schedule the matter for hearing before the Court.

### **Reasonable Rights of Parenting Time (formerly known as Visitation)**

In general, "reasonable rights of parenting time" in Macomb County are as follows:

- A. **Weekend Parenting Time** - Every other weekend from 6:00 p.m. Friday until 7:00 p.m. Sunday (during the school year), and 8:00 p.m. Sunday (during the summer).
- B. **Weekday Parenting Time** – One evening per week from 6:00 p.m. to 8:00 p.m. on a weekday to be determined by the parties. If unable to agree, it will be on Thursday. 9:00 p.m. extended return during the summer months.
- C. **Holidays** –
  - (1) Father will have these specified holidays in all odd-numbered years, and mother will have these holidays in all even-numbered years:
    - Memorial Day Weekend from Friday at 6:00 p.m. until Memorial Day at 7:00 p.m.
    - Labor Day Weekend from Friday at 6:00 p.m. until Labor Day at 7:00 p.m.
  - (2) Father will have the following holidays in all even-numbered years and mother will have these holidays in all odd-numbered years:
    - Fourth of July from July 3<sup>rd</sup> at 6:00 p.m. until July 5<sup>th</sup> at 7:00 pm.
    - Halloween from 4:00 p.m. until 8:00 p.m. on October 31.
    - Thanksgiving weekend from 6:00 p.m. the Wednesday evening before Thanksgiving until 7:00 p.m. Sunday.
- D. **Mother's Day and Father's Day** – The child(ren) will be with the mother for the entire Mother's Day weekend and with the father for the entire Father's Day weekend from Friday at 6:00 p.m. until Sunday at 7:00 p.m. Normal parenting time schedule resumes after the Mother/Father's Day weekend.
- E. **Christmas/Winter Break**
  - (1) In all odd-numbered years, father's Christmas parenting time will be from 6:00 p.m. on the last day of the child(ren)'s school until 9:00 p.m. on December 24<sup>th</sup>.

Mother's Christmas parenting time will be from 9:00 p.m. on December 24<sup>th</sup> until 7:00 p.m. the day before school resumes.

- (2) In all even-numbered years, mother's Christmas parenting time will be from 6:00 p.m. on the last day of the child(ren)'s school until 9:00 p.m. on December 24<sup>th</sup>. Father's Christmas parenting time will be from 9:00 p.m. on December 24<sup>th</sup> until 7:00 p.m. the day before school resumes.

#### **F. Easter/Spring Break and Mid-Winter Break**

Father will have the Easter/Spring Break in even-numbered years and Mid-Winter Break in odd-numbered years. Mother will have the Easter/Spring Break in odd-numbered years and Mid-Winter Break in even-numbered years. Spring and Mid-Winter parenting time begins at 6:00 p.m. the day school recesses and concludes at 7:00 p.m. the evening before the school resumes.

#### **G. Summer Parenting Time**

- (1) Three (3) weeks (only 2 weeks consecutive) for each parent.
  - (a) The **single week** shall consist of seven (7) consecutive overnights to begin on a Sunday at 7:00 p.m. The custodial parent's vacation week may not disrupt the non-custodial parent's alternating weekend.
  - (b) The **two-week** period shall consist of 14 consecutive overnights to begin on a Sunday at 7:00 p.m.
- (2) Both parties must agree to a schedule of these dates by May 1<sup>st</sup>.

**H. Extra Curricular Activities** – Each parent is responsible for taking the child(ren) to all extracurricular and sporting activities which are scheduled during their parenting time.

#### **Parenting Time Abatement**

It is the policy of the Friend of the Court to grant a 50% parenting time credit on the child support obligation of the non-custodial parent provided the period extends for a minimum of six consecutive overnights with his/her child(ren) unless the order or judgment specifies differently. Written verification will be requested of the custodial parent. If this credit is objected to, the Friend of the Court will schedule the matter for hearing before the Court. If your order or Judgment does not address the issue of parenting time abatement, you must file a motion to obtain a credit and modify the order or judgment.

#### **Consent Orders**

All agreements by the natural parents of a child(ren) involving custody, support, parenting time, removal of the minor child(ren) from the state of Michigan, and any

other matter related to the child(ren) which is in the best interests of said child(ren), will be processed by the Friend of the Court upon request.

### **Processing Child and Spousal Support Payments**

Several procedures have been established by the Macomb County Friend of the Court for the processing of child and spousal support payments. The more important are as follows:

- (1) The Friend of the Court Office will no longer accept personal checks upon receipt. Checks will be accepted and processed by MiSDU. The Friend of the Court Office will accept cash at the Cashier counter.
- (2) The Friend of the Court/MiSDU collects and distributes support through the Michigan Child Support Enforcement System (MiCSES).
  - (a) MiCSES is designed according to federal regulations. The federal government requires all support charges (e.g., child support, child care, spousal support, etc.) to be calculated based on a **monthly charge cycle**.
  - (b) For cash, money orders, personal and out-of-state checks, the federal government requires **current child support and spousal support for a given month to be paid first**.

Any additional amount can be used to pay overdue support arrearages or other types of obligations (e.g., service fees).

- (c) MiCSES does not allow for the automatic distribution of overpayments on an account.

If a payer's monthly payment exceeds the amount due for a month, and there are no other obligations to apply the money to, the additional monies are placed in a **suspense account**.

### **Unreimbursed Health Care Expenses**

The custodial party or non-custodial party must submit their request for proportionate reimbursement to the other party within 28 days of the insurers' final payment or denial of coverage. If direct reimbursement is not received by the other party within 28 days after the demand, the request for payment of uninsured health care expenses may be submitted to the Friend of the Court, and only paid portions of an expense will be processed. The Friend of the Court will then establish a medical assessed account and pursue reimbursement for the custodial party or non-custodial party, first by correspondence and, if that is unsuccessful, by show cause hearing.

It is the custodial party or non-custodial party's duty to submit the reimbursement request to the Friend of the Court within a year from the date the expense was paid. Expenses more than a year old, from date of payment, will not be accepted by the Friend of the Court for enforcement.

Any questions relating to these policies and procedures may be directed to the Friend of the Court medical program specialist during regular business hours.